

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Aaron David Frishberg, Daniel  
Sholom Frishberg, and Emanuel Jacob Frishberg

Individually and in their capacities as co-administrators  
of the estate of Mildred Frishberg

Plaintiffs

Dkt. No.

v.

The Westbury Place

Defendant

JURISDICTION

1. This Court has subject matter jurisdiction over the suit based upon diversity of citizenship between all Plaintiffs and all Defendants in a case in which more than seventy-five thousand dollars is in controversy.

VENUE

2. Venue is properly laid in the Southern District of New York, where Plaintiffs' decedent was domiciled, and where one of the Plaintiffs resides.

PARTIES

3. Plaintiffs, Aaron David Frishberg, Daniel Sholom Frishberg, and Emanuel Jacob Frishberg, are the sons and intestate heirs of decedent Mildred Frishberg, ("Millie"). They are domiciliaries and residents, respectfully, of New York, New York, Surfside, Florida, and Federal Way, Washington.

FILED  
U.S. DISTRICT COURT  
2014 OCT -6 AM 10:27  
S.D. OF N.Y.

## FACTS

5. In or about August, 2012, Millie was a resident of Defendant "The Westbury Place", afflicted by advanced Alzheimer's disease with acute senility, and was physically debilitated to the extent that she needed to sit in a wheelchair when not in bed.
6. In or about August, 2012, she was transferred from The Westbury Place to a hospital in Houston, Texas, reportedly because of pressure sores which had developed on the soles of her feet.
7. At the end of September, 2012, the hospital contacted the undersigned, Aaron Frishberg, to discuss Millie's medical condition. In essence, the hospital, through one of its social workers, informed me that Millie's infections had spread so that they were not only on the epidermal layer of her feet, but were attacking the muscle tissue under the skin.
8. The hospital social worker advised me that Millie's infections had reached a degree of severity such that the doctors did not believe that there was any chance that she would recover from the infections, and that the inevitable course of the infections was to end her life.
9. The social worker suggested that it was time to say goodbye to Millie and allow her to die without prolonging the pain she would experience increasingly with the worsening of the infections.
10. I responded that this was a decision which I would need to make in consultation with my two brothers.
11. By the end of the weekend, my brothers and I had reached a unanimous consensus

Case 4:15-cv-00480 Document 1 Filed 10/06/14 Page 3 of 6  
our mother, and not prevent her illness from taking its natural course, while administering to her illness in the way which would minimize her pain and allow her the most comfort possible under the circumstances.

12. I communicated this decision to the hospital, and spoke with a representative of the hospice care company on Monday, October 3, 2012.

13. Mildred "Millie" Frishberg died on Monday, October 3, 2012, survived by her three sons, by their progeny, and by her sister, Norma Friedman.

#### As a First Cause of Action

14. Plaintiffs repeat as if stated here in full ¶¶ 1-13 of this Complaint.

15. Mildred Frishberg's life was wrongfully terminated because of the negligence of The Westbury Place, and its employees, which negligence consisted of the failure to attend to her to prevent the development of pressure sores, and the failure to treat those pressure sores when they had developed in manner which would have prevented their spreading to the muscle tissue of her feet, making the infection incurable.

#### As a Second Cause of Action

16. Plaintiffs repeat as if stated here in full ¶¶ 1-15 of this Complaint.

17. Mildred Frishberg experienced pain and suffering during her lifetime as a result of the negligent mistreatment she received at the Westbury Place, which caused her to develop pressure sores and allowed these sores to spread.

#### As a Third Cause of Action


18. Plaintiffs repeat as if stated here in full ¶¶ 1-17 of this Complaint.

19. Plaintiffs Aaron Frishberg, Daniel Frishberg, and Emanuel ("Manny") Frishberg

were deprived of the companionship of Mildred Frishberg as a result of the negligence of Defendant The Westbury Place.

Wherefore, Plaintiffs demand judgment in an amount to be determined by the triers of fact in favor of the estate of Mildred Frishberg on their first and second causes of action, and in favor of them each individually in amounts to be determined by the triers of fact.

Yours, etc.

  
Aaron David Frishberg (AF-6139)  
a member of the bar of this Court  
Attorney for Plaintiffs  
116 W. 111<sup>th</sup> Street  
New York, NY 10026  
212 740 4544

#### JURY DEMAND

A trial by jury is demanded by Plaintiff as to all claims triable by jury.

  
Aaron David Frishberg

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

CIVIL COVER SHEET  
14 CV 8015

**PLAINTIFFS**  
Aaron David Frishberg, Daniel Sholom Frishberg and Emanuel Jacob Frishberg

**DEFENDANTS**  
The Westbury Place

OCT 06 2014

**ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
Aaron David Frishberg, Law Offices of Aaron David Frishberg, 116 West 111th Street, New York, NY 10026, 212 740 4544

**ATTORNEYS (IF KNOWN)**

**CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)**  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. sec. 1332

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

Is THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

**TORTS**

**ACTIONS UNDER STATUTES**

**CONTRACT**

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 151 MEDICARE ACT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- ☐ 160 STOCKHOLDERS SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

**PERSONAL INJURY**

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☒ 362 PERSONAL INJURY - MED MALPRACTICE

**ACTIONS UNDER STATUTES**

**CIVIL RIGHTS**

- ☐ 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- ☐ 446 AMERICANS WITH DISABILITIES - OTHER
- ☐ 448 EDUCATION

**PERSONAL INJURY**

- ☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- ☐ 365 PERSONAL INJURY PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**PERSONAL PROPERTY**

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING

- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

**PRISONER PETITIONS**

- ☐ 463 ALIEN DETAINEE
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER

**PRISONER CIVIL RIGHTS**

- ☐ 550 CIVIL RIGHTS
- ☐ 555 PRISON CONDITION
- ☐ 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

**FORFEITURE/PENALTY**

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
- ☐ 21 USC 881
- ☐ 690 OTHER

**LABOR**

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL RET INC SECURITY ACT

**IMMIGRATION**

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

**BANKRUPTCY**

- ☐ 422 APPEAL
- ☐ 28 USC 158
- ☐ 423 WITHDRAWAL
- ☐ 28 USC 157

**PROPERTY RIGHTS**

- ☐ 820 COPYRIGHTS
- ☐ 830 PATENT
- ☐ 840 TRADEMARK

**SOCIAL SECURITY**

- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-THIRD PARTY
- ☐ 26 USC 7609

**OTHER STATUTES**

- ☐ 375 FALSE CLAIMS
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 410 ANTITRUST
- ☐ 430 BANKS & BANKING
- ☐ 450 COMMERCE
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 896 ARBITRATION
- ☐ 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ not specified OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented
 ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

|                          |                        |   |                        |   |                        |
|--------------------------|------------------------|---|------------------------|---|------------------------|
| CITIZEN OF THIS STATE    | PTF DEF<br>[X] 1 [ ] 1 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY                   | PTF DEF<br>[ ] 3 [ ] 3 | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF DEF<br>[ ] 5 [X] 5 |
| CITIZEN OF ANOTHER STATE | [ ] 2 [ ] 2            | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | [ ] 4 [ ] 4            | FOREIGN NATION  | [ ] 6 [ ] 6            |

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Aaron David Frishberg, 282 Cabrini Blvd., 2c, New York, NY 10040 (New York)  
 Daniel Sholom Frishberg, 8855 Collins Ave., Apt. 5B, Surfside, FL 33154 (Dade)  
 Emanuel Jacob Frishberg, 28115 19th Place South, Apt. 175, Federal Way, WA, 98003 (King)

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

The Westbury Place  
 5201 South Willow Drive  
 Houston, TX 77035 (Harris)

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN  
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE Oct. 3, 2014 SIGNATURE OF ATTORNEY OF RECORD



RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO  
☒ YES (DATE ADMITTED Mo. 6 Yr. 1987)  
 Attorney Bar Code # 2131894

Magistrate Judge is to be designated by the Clerk of the Court



Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)